

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

TUESDAY, THE 4TH SEPTEMBER 2007 / 13TH BHADRA 1929

Crl.Rev.Pet.No. 3226 of 2007()

CRA.388/2005 of ADDL.SESIONS COURT (SPL.CAURT), KOTTAYAM
CC.426/2002 of JUDL.MAGISTRATE OF FIRST CLASS-I, KANJIRAPPALLY
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REVN. PETITIONERS:

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1. TOMY, S/O. SIMON, EDIYAKUNNEL
ANIKKADU VADAKKUM BHAGOM KARA,
CHENGALAM EAST VILLAGE, KANJIRAPPALLY
 2. BABY CHANDI, S/O. CHANDY, VETTIYAMKAL VEEDU,
ANICKADU, VADAKKUM BHAGOM KARA, CHENGALAM EAST VILLAGE
 3. ANNESH JOSEPH, S/O. JOSEPH MATHEW,
MUTHUPLACKAL VEEDU, MEENACHIL KARA, MEENACHIL

BY ADV. SRI.JOHNSON MANAYANI

RESPONDENTS:

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1. THE SUB INSPECTOR OF POLICE,
PALICKATHODU POLICE STATION, KOTTAYMA DISTRICT
 2. STATE OF KERALA, REPRESENTED BY ITS PUBLIC PROSECUTOR,
HIGH COURT OF KERALA

BY PUBLIC PROSECUTOR SRI. K.S. SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 4-09-2007 THE COURT ON 04/09/2007 PASSED THE
FOLLOWING:

V. RAMKUMAR, J.

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Dated: 4th September 2007

ORDER

Heard both sides.

2. The petitioners who are accused Nos. 1 to 3 in C.C. No. 426 of 2002 on the file of the Judl. First Class Magistrate Court No. I, Kanjirappally challenges the conviction entered and the sentence passed against them concurrently by the courts below for offences punishable under Sections 451, 323 and 341 read with Sec. 34 I.P.C.

3. The case of the prosecution can be summarised as follows:-

On account of the enmity towards P.W.1 who was engaged in timber business in the very same place where the first accused was conducting the same business, with the intention of committing house trespass and to voluntarily cause injury to P.W.1, the three accused persons in furtherance of their common intention, at 7.30 p.m. on 15-4-2002 reached the house of P.W.1 in a Jeep driven by the 3rd accused. Accused Nos. 1 and 2 who were inside the Jeep criminally trespassed into the residential building of P.W.1 at Akalakunnam Panchayat and A1 slapped P.W.1 at his left cheek and when P.W.2 the wife of P.W.1 intervened A1 seized her face and gave her a push backwards. A1 then gave a cut at the forearm of P.W.2 with his bare hand and thereafter accused Nos. 1 and 2 dragged P.W.1 to the courtyard of the house and A2 and A3 wrongfully restrained P.W.1. A1 fisted P.W.1 on his chest and kicked at his abdomen causing injuries to P.Ws 1 to 2. The accused have

thereby committed the aforementioned offences.

4. The prosecution altogether examined 7 witnesses as P.W.1 to 7 and got marked seven documents as Exts.P1 to 7 and four material objects as MOs 1 to 4.

5. After the close of the prosecution evidence the accused were questioned under Sec. 313 (1) (b) Cr.P.C. They denied the incriminating circumstances put to them and maintained their innocence.

6. When called upon to enter on their defence the accused examined D.W.1. According to his version the accused had gone to the house of P.W.1 as requested by him for collecting the money for supplying construction materials such as sand and brick and it was P.W.1 and others who attacked the accused.

7. The learned Magistrate, after trial, as per judgment dated 3-6-2005 found the revision petitioners guilty of the offences and sentenced A1 and A2 to undergo simple imprisonment for one year under section 451 and simple imprisonment for six months under Sec. 323 read with Sec. 34 I.P.C. The second accused was sentenced to simple imprisonment for 15 days for the offence punishable under Sec. 341 read with Sec. 34 I.P.C. The 3rd accused was sentenced to undergo simple imprisonment for six months for the offence punishable under Sec. 323 read with Sec. 34 I.P.C. and simple imprisonment for 15 days under Sec. 341 read with Sec. 34 I.P.C. The substantive sentences were directed to be run concurrently. The revision petitioners preferred Appeal as Crl. Appeal 388 of 2005 and the same was dismissed as per judgment dated 11-7-2007. Hence this revision.

8. Eventhough the learned counsel appearing for the revision

petitioners assailed the conviction recorded against them, in as much as the conviction has been entered after an evaluation of the oral and documentary evidence and the trial court had the unique advantage of seeing the witnesses and assessing their credibility, this court sitting in the rarefied revisional jurisdiction will be loath to dislodge the said conviction which is accordingly confirmed.

9. What now survives for consideration as the question as to whether the sentence imposed on the revision petitioners is legal and proper.

10. Eventhough the counter case registered at the instance of the revision petitioners was referred by the police, the evidence of D.W.1 would indicate that the conduct of P.W.1 and other family members were also not free from blame. A1 and P.W.1 are related to each other and whether it was business rivalry or the necessity to collect the price of materials which prompted the accused to visit house of P.W.1, the fact remains that the injuries sustained by P.W.1 were minor injuries. Having regard to the facts and circumstances of the case, I do not think that the revision petitioners deserve penal servitude by way of incarceration. I am of the view that a proper fine and a direction to compensate P.Ws 1 and 2 will serve the ends of justice. Accordingly, the sentence imposed on the revision petitioners is set aside and instead, each of them shall pay a sum of Rs. 3,000/-, 2,000/- and 3,000/- respectively for each of the conviction under Sec. 323 and 341 read with Sec. 34 I.P.C. The fine amount shall be paid within 45 days from today. From out of the fine amount, a sum of Rs. 5,000/- each shall be paid to P.Ws 1 and 2 by way of compensation under Sec. 357 (1) Cr.P.C.

11. Accused Nos. 1 and 2 who are said to be in custody shall

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be released from prison forthwith unless their continued detention is warranted in any other case against them.

This Revision is disposed of accordingly.

**V. RAMKUMAR,
(JUDGE)**

ani.

